THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2016-001839
Case No. 2016-CP-40-3102

Richland County, South Carolina,................................ Appellant-Respondent,

Central Midlands Regional Transit Authority, ... Respondent,

v.

The South Carolina Department of Revenue and
Rick Reames, III, in his official
capacity as its Director .... Respondents-Appellants,

v.

Richland PDT, a joint venture consisting of
M.B. Kahn Construction Co., Inc., ICA Engineering,
Inc., and Brownstone Construction Group, LLC,
as a unit and Individually, ... Third-Party Defendants.

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STATEMENT OF THE CASE

This lawsuit arises out of an attempt by the Respondents-Appellants South Carolina Department of Revenue (SCDOR) and its former Director, Rick Reames, III, to exercise unprecedented control over a political subdivision's expenditure of tax revenues collected by SCDOR. Based upon events leading to this litigation and the positions taken as part of this litigation, SCDOR and its Director seek to "oversee" and/or even direct how tax revenues may or may not be expended by the Appellant-Respondent Richland County under certain statutes and local ordinances.

By way of background, in 1995, the South Carolina General Assembly enacted Chapter 37 of Title 4 of the South Carolina Code of Laws which is entitled "Optional Methods for Financing Transportation Facilities" (hereinafter referred to as the "Transportation Act"). *See*, 1995 Act No. 52. Section 1 of the Transportation Act sets forth a preamble to the Act with legislative findings that state as follows:

> In furtherance of the powers granted to the counties of this State pursuant to the provisions of Section 4–9–30, and Section 6–21–10 *et seq.*, of the 1976 Code, each of the counties of this State is authorized to establish transportation authorities and to finance, following the public hearing and referendum required in this act, the cost of acquiring, designing, constructing, equipping and operating highways, roads, streets, and bridges, and other transportation-related projects, either alone or in partnership with other governmental entities including,

> but not limited to, the South Carolina Department of Transportation.

See, 1995 Act No. 52, § 1.[1]

On July 18, 2012, the Richland County Council enacted Ordinance Number 039-12HR ("Penny Tax Ordinance") for the purpose of levying a one percent sales and use tax pursuant to S.C. Code Ann. § 4-37-30 of the Transportation Act (hereinafter referred to as the "Penny Tax").[2] The Penny Tax Ordinance provided for a referendum to be held on November 6, 2012. The Ordinance also provided for the County's implementation of the Penny Tax upon approval by the electorate. (R. 419-426). On November 6, 2012, the voters of Richland County approved the referendum.[3]

Following approval of the referendum, Richland County began establishing the framework for the implementation of the Transportation Penny Program to be

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[1] The title to 1995 Act No. 52 states that the Transportation Act was intended "to authorize counties to establish optional methods for the financing of transportation facilities including the acquisition, construction, equipment, and operation of highways, roads, streets, bridges, and other transportation-related projects." *See*, 1995 Act No. 52. The list of transportation-related projects was expanded in 2000. The title to 2000 Act No. 368 states that the amendment was "to provide that the proceeds of the tax may be used for mass transit systems and greenbelt projects." *See*, 2000 Act No. 368.

[2] Richland County Council chose not to adopt a transportation authority as permitted by the Transportation Act.

[3] The results of the referendum were challenged to the Richland County Board of Elections and Voter Registration, which denied the protest. An appeal was filed to the State Board of Canvassers, which affirmed the decision of the County Board. Thereafter, in *Letts v. Richland County*, Appellate Case No. 2012-213679, the petitioner sought a writ of certiorari to review the decision of the State Board. On March 21, 2013, the South Carolina Supreme Court unanimously denied the petition for writ of certiorari. (R. 427-428).

paid for by the sales and use tax collected pursuant to the referendum. The Penny Tax was levied and collected by SCDOR for Richland County effective May 1, 2013. From May 1, 2013 to March 2016, SCDOR remitted the Richland County Penny Tax revenue allocation to the South Carolina State Treasurer as required by S.C. Code Ann. §4-37-30(A)(15).

The chronology of events leading to this action began in April 2015, when former SCDOR Director Rick Reames informed the Richland County Administrator that SCDOR intended to initiate a "review" of the "Richland County Transportation Sales Tax" passed by referendum in November 2012. (R. 95). The Director advised that "this review is to ensure public accountability and transparency regarding the collection *and expenditure of revenue* generated by the tax." (R. 95). (Emphasis added). Reames claimed that this "review" was "[p]ursuant to our statutory and regulatory authority," but no specific citations granting such authority were provided. (R. 95).

Thereafter, on December 3, 2015, Reames sent a letter stating that "Council has misappropriated a significant amount of Penny revenue and is scheduled to spend millions of additional dollars over the next several years for expenditures falling outside the parameters of the transportation tax laws." (R. 99). Reames instructed the County "to take action to correct these expenses prospectively and by reimbursement for previously paid amounts." (R. 99). Reames' letter took the

position that administrative expenses associated with the Transportation Penny Tax Program could not be paid from the Penny Tax revenues.

On February 24, 2016, SCDOR sent an additional letter to the County reiterating its position that administrative expenses associated with the Transportation Penny Tax Program could not be paid with the Penny Tax revenues and that such revenues could only be used for capital projects. SCDOR attached its "Report on Sales and Use Tax for Transportation Facilities in Richland County." This Report contained SCDOR's instructions to the County as to how the Penny Tax revenues must be spent and allocated. (R. 115-123).

By letter dated April 1, 2016, SCDOR made additional demands to the County and increased its list of "required" action items to twelve, including requiring the County to use Internal Revenue Code (IRC) § 263 and § 263A in determining whether Penny Tax revenues could be used to fund any expenses incurred in connection with the Transportation Penny Tax Program. (R. 125-126). The April 1, 2016 letter stated:

> Simply put, there should be no money expended out of the Penny Tax Fund for costs other than those costs that are considered capital costs of a specific transportation-related project. It is important to realize that the IRC § 263 and IRC § 263A standards are to be used to determine when an expenditure of Penny Tax Funds is appropriate. No matter what accounting method/system for reporting purposes is used, the expenditure of funds must adhere to these spending guidelines.

(R. 126). SCDOR closed that letter by stating: "We believe that these changes will bring the County's Penny Tax Program into compliance with state law and potentially serve as a *template for the administration of funds of other counties to follow*." (R. 129). (Emphasis added).

Then, on April 27, 2016, former Director Reames advised the County that "the Department must take action to enforce the state's tax laws and will immediately cease allocations of revenue to the Richland County Transportation Penny Tax fund until such time as Council brings the program into compliance." (R. 133). Reames further wrote that "the Department has a responsibility under the law to monitor Penny Tax collections, and absent further action, the Department's monthly allocation and the resulting July distribution of Penny Tax funds will be zero." (R. 133). In effect, SCDOR stated its intent to withhold the Penny Tax revenues it had collected from sales in Richland County.

By letter dated May 4, 2016, the Chairman of Richland County Council responded to threats made by SCDOR. The Chairman explained that the County "follow[s] the standards required by the Government Accounting Standards Board (GASB), which is a uniform standard applied to all local governments." (R. 136). The Chairman further wrote that "[i]f we were to abide by your requests, we would be forced to pay administrative costs from the County's General Fund, which would require us to raise taxes. We cannot impose that kind of burden on our citizens." (R. 135). The Chairman also expressed concern over the threatened

withholding of Penny Tax revenues: "We must also defend the County's credit rating, its contractual obligations and the jobs created by the Program. If you refuse to allocate to us the Penny collected in our County, then you put all of these things in great peril." (R. 135). Finally, the Chairman addressed the specific concerns with The COMET bus system which is largely funded by Penny Tax revenues. (R. 136).

By letter dated May 19, 2016, SCDOR responded to a letter from the Central Midlands Regional Transportation Authority's (CMRTA) inquiring whether SCDOR intended to restrict the flow of Penny Tax revenues for operation of The COMET bus system. SCDOR wrote: "It is not the Department's intent, however, to restrict the use of Penny Tax funds for operation of The COMET bus system" and if the "Penny Tax fund allocations are still halted at the time of the normal July 2016 distribution, the Department will issue to Richland County the 29% of the revenue specified for [The] COMET bus system operations." (R. 138). Yet, after suit was filed, SCDOR appeared to change its position and indicated that Penny Tax revenue could not be used for operation of a mass-transit system such as The COMET consistent with its position that the revenues may only be used for capital costs.

On May 20, 2016, Richland County filed a Complaint seeking the issuance of a declaratory judgment, a writ of mandamus and a permanent injunction against SCDOR and then Director Rick Reames, who is sued in his official capacity. The

County sought a declaratory judgment declaring that "Richland County is not subject to Defendants' directives, demands, or orders on any matter related to Richland County's spending of Penny Tax Revenues." (R. 91). Similarly, the County sought an injunction prohibiting "Defendants from issuing directives, demands, or orders on any matter related to Richland County's spending of Penny Tax Revenues." (R. 91). Finally, the County sought a writ of mandamus "directing the Defendants to remit to the Treasurer collected Penny Tax Revenues for sales and use tax transactions within Richland County, including the July 2016 allocation and remittance due and all future allocations and remittances." (R. 91-92). With its Complaint, the County also filed a Petition for Writ of Mandamus and Motion for Temporary Injunction. (R. 139-140).

Thereafter, on June 20, 2016, SCDOR and Rick Reames filed an Answer which included counterclaims seeking declaratory, injunctive and monetary relief. The counterclaims include claims for civil conspiracy, "civil fraud," and constructive fraud wherein SCDOR and its Director seek monetary relief on behalf of "the taxpayers of Richland County." (R. 195-230). SCDOR Reames also seek an injunction which prohibits the County "from making any further payments, expenditures, contracts or other obligations of Penny Tax Funds unless and until the Plaintiff adopts and implements IRC 263/263A or some other acceptable uniform standard to govern its spending and adopt other appropriate safeguards to ensure that expenditures of Penny Tax Funds qualify as capital costs under the Act

and therefore are a proper use of Penny Tax dollars." (R. 227). Finally, SCDOR and Reames seek declaratory relief including a ruling that Richland County Ordinance Number 039-12HR is void to the extent that the Ordinance allows for the expenditure of Penny Tax revenues for other than "capital costs" or what the SCDOR describes as "County operations beyond those necessary for the acquisition and/or construction of transportation related facilities." (R. 213). Similarly, SCDOR and Reames seek a declaration that "any expenditures of Penny Tax Funds by the Plaintiff that cannot be 'capitalized' as a capital cost of an approved project to build or construct 'highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation related projects' are illegal and beyond the scope of the Act." (R. 215-216).

A hearing was held on June 28, 2016, before Circuit Court Judge G. Thomas Cooper, Jr. on the County's Petition for Writ of Mandamus and/or Motion for Temporary Injunction. Judge Cooper also heard SCDOR and Reames' Motion for Injunction or Alternatively for Appointment of a Receiver. As described in the Amended Order, SCDOR's motion "is based on [SCDOR's] interpretation of the Transportation Act to only authorize Plaintiff to expend Penny Tax Revenues on capital costs. SCDOR and the Director assert that because Richland County's expenditures include expenditures for administrative costs (non-capital costs),

Defendants are statutorily and equitably authorized to withhold the Penny Tax Revenue." (R. 29).

Judge Cooper issued an Order on June 30, 2016, wherein he granted the County's Petition for Writ of Mandamus and directed the SCDOR Director "to remit the 2016 second quarter Penny Tax Revenues to the Treasurer." (R. 21). That Order denied the County's Motion for Temporary Injunction and denied SCDOR's Motion for Injunction or Alternatively for Appointment of a Receiver. (R. 20).

The parties each filed Motions to Alter or Amend pursuant to Rule 59(e), SCRCP. Without holding a subsequent hearing, Judge Cooper adjudicated the Rule 59(e) motions by issuing an Amended Order filed August 2, 2016.

With his Amended Order, Judge Cooper extended the writ of mandamus to require the SCDOR Director "to allocate and remit all Penny Tax Revenues collected within Richland County, including the July 2016 allocation and remittance due for the second quarter of 2016 and *all future allocations and remittances*." (R. 47). (Emphasis in original). Judge Cooper denied the County's Motion for Temporary Injunction "because the County is unable to sufficiently show it will suffer irreparable harm in light of the Court's decision above granting Plaintiff's Petition for Writ of Mandamus." (R. 44). Judge Cooper also included the following conclusions of law in the Amended Order:

5. SCDOR and the Director have a level of statutory authority to oversee Richland County's use of the Penny Tax Revenues.

6. SCDOR and the Director have a "special interest" in the County's use of the Penny Tax Revenues sufficient to confer standing upon Defendants for the purpose of presenting the claims in its Defense and Counterclaims.

7. SCDOR and the Director have standing based on the public importance exception for the limited purpose of the resolution of the unique issues concerning Richland County raised by this case.

(R. 47).

Richland County thereupon filed a timely appeal to this Court. SCDOR and its former Director Rick Reames have also filed a cross-appeal.

ARGUMENTS

I. The Circuit Court correctly granted a writ of mandamus to compel SCDOR and its Director to comply with their ministerial duties and remit the Penny Tax revenues collected in Richland County to the Treasurer on a quarterly basis as required by statute.

Circuit Court Judge G. Thomas Cooper, Jr. ruled that "SCDOR and the Director's duty to remit Penny Tax Revenues to the Treasurer pursuant to S.C. Code Ann. § 4-30-37(A)(15) is a ministerial duty which Defendants are bound by law to carry out." (R. 46). As a result, he issued a writ of mandamus directing SCDOR and then Director Rick Reames, III, in his official capacity, "to allocate and remit all Penny Tax Revenues collected with Richland County including the July 2016 allocation and remittance due for the second quarter of 2016 and all future allocations and remittances." (R. 47). (Emphasis omitted). On appeal, SCDOR and Reames contend that the issuance of the writ of mandamus was in error.

The South Carolina Supreme Court has explained that "[m]andamus is somewhat of a hybrid proceeding. It is not a suit in tort, nor is it a suit in contract; it is not strictly a law case, nor is it one in equity. It is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal." *Charleston County School District v. Charleston County Election Commission*, 336 S.C. 174, 519 S.E.2d 567, 570 (1999). The standard of review is deferential to the lower court. This Court has held that "[w]hether to

issue a writ of mandamus lies within the sound discretion of the trial court, and an appellate court will not overturn that decision unless the trial court abuses its discretion." *Id.* "An abuse of discretion arises where the trial court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support." *Id.* Moreover, "[i]n reviewing a decision on a mandamus petition, an appellate court will not disturb the factual findings of the trial court when those findings are supported by any reasonable evidence." *Id.*[4]

A writ of mandamus is "the highest judicial writ known to the law." *Knight v. Austin*, 396 S.C. 518, 722 S.E.2d 802, 804 (2012). "The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created and imposed by law." *Id.* "[T]o obtain a writ of mandamus requiring the performance of an act, the applicant must show (1) a duty of the opposing party to perform the act, (2) the ministerial nature of the act, (3) the applicant's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy." *Charleston County School District*, 519 S.E.2d at 572. *See also*, *Redmond v. Lexington County School District Number Four*, 314 S.C. 431, 445 S.E.2d 441, 445 (1994).

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[4] In their Appellant's Brief, SCDOR and Reames did not address the standard of review for a writ of mandamus, but in a conclusory manner, they claim that "this Court's standard of appellate review in this matter is the broadest available." *See*, SCDOR's Appellant's Brief, p. 6. That is not correct. The appellate standard of review for a writ of mandamus is deferential as discussed herein.

In the present case, Judge Cooper correctly determined that Richland County had established each of the four factors. SCDOR and its Director have not shown that he abused his discretion in his analysis of those four factors nor in ultimately issuing the writ of mandamus directing that the Penny Tax revenues be remitted on a quarterly basis as required by statute.

A. SCDOR's Ministerial Duties Under Transportation Act

SCDOR and its Director have certain mandatory or "ministerial" duties required by the Transportation Act. A duty is "ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts." *Wilson v. Preston,* 378 S.C. 348, 662 S.E.2d 580, 583 (2008). Pursuant to the Transportation Act, SCDOR and its Director have the duty to (1) administer and collect Penny Tax funds, (2) remit the Penny Tax revenues to the Treasurer, (3) remit unidentified Penny Tax revenues to the Treasurer, (4) provide counties and the Treasurer with data for the purpose of calculating distributions of the Penny Tax Revenues it has collected on the County's behalf, and (5) notify the County when "the tax has raised revenues sufficient to provide the greater of either the cost of the project or projects as approved in the referendum or the cost to amortize all debts related to the approved projects." *See*, S.C. Code Ann. § 4-37-30(A)(5), (8), (15) and (16); S.C. Code Ann. § 4-37-50.

It is well settled that the type of language used in a statute dictates whether or not a duty is ministerial. The General Assembly chose to use the word "must" in establishing SCDOR's duties prescribed in S.C. Code Ann. §§ 4-37-30(A)(8) and (15) and the word "shall" with respect to SCDOR's duties under S.C. Code Ann. §§ 4-37-30(A)(16) and 4-37-50. Both the words "must" and "shall" are mandatory words and direct an agency to take some affirmative action. *Starnes v. South Carolina Department of Public Safety*, 342 S.C. 216, 535 S.E.2d 665, 667 (Ct. App. 2000); *South Carolina Department of Highways & Public Transportation. v. Dickinson*, 288 S.C. 189, 341 S.E.2d 134, 135 (1986). It is well settled that "[t]he term 'shall' in a statute means that the action is mandatory." *Wigfall v. Tideland Utilities, Inc.,* 354 S.C. 100, 580 S.E.2d 100, 105 (2003). *See also*, *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) ("[u]nder the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement"). When a statutory direction to an agency is couched in the terms of "must" or "shall," the agency has no discretion as to whether to carry out the statutory directive. The General Assembly has mandated it to do so.

In contrast to its mandatory language, the General Assembly describes non-mandatory and thus discretionary statutory duties with different language. "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary. This is the ordinary significance of the use

of the word 'may,' [if] nothing appears to require that it be given any other meaning in the present statute." *State v. Wilson*, 274 S.C. 352, 264 S.E.2d 414, 416 (1980).

Therefore, in construing the applicable provisions of the Transportation Act, Judge Cooper was correct in determining that the duties created therein were ministerial in nature given the express statutory commands that SCDOR "shall" and "must" perform those duties. As Judge Cooper explained, the mandatory "must" language in S.C. Code Ann. § 4-37-30(A)(8) "imposes on SCDOR and the Director the duty to levy the Penny Tax, collect the Penny Tax Revenue, and assure that the Penny Tax Revenues collected in Richland County are properly accounted for as funds belonging to Richland County." (R. 37). Likewise, the mandatory "must" language in S.C. Code Ann. § 4-37-30(A)(15) imposes on SCDOR and the Director "the ministerial duty to remit" the Penny Tax revenues it collects for Richland County to the Treasurer. (R. 38).

Nonetheless, in disregard of the clear and unambiguous language of the Transportation Act, SCDOR and Reames claim to have discretionary authority to withhold the remittance of the collected Penny Tax revenues if they conclude that those revenues are not being expended "in accordance with the permissive uses and restrictions set forth in the Act." *See*, SCDOR's Appellant's Brief, p. 14. SCDOR and Reames claim that they have "the authority to prevent the misuse, misallocation and improper expenditures of the County's use of Penny Tax revenues." *See*, SCDOR's Appellant's Brief, p. 14. They argue that such authority

is derived from "a number of statutory sources which set forth and describe the Department's tax administration, regulatory and enforcement powers." *See*, SCDOR's Appellant's Brief, p. 14. Specifically, SCDOR and Reames point to S.C. Code Ann. §§ 12-4-10, 12-4-310, 12-36-2660, and 12-4-387 as sources for their authority to withhold remittance of the Penny Tax revenues to "enforce" compliance with the Transportation Act.

SCDOR's effort to cobble together statutes from other chapters in Title 12 of the South Carolina Code fails to refute the express language of the Transportation Act. "[W]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." *Whiteside v. Cherokee County School District. No. One*, 311 S.C. 335, 428 S.E.2d 886, 889 (1993), *quoting Wilder v. South Carolina Highway. Department*, 228 S.C. 448, 90 S.E.2d 635 (1955).

In its Appellant's Brief, the County has already discussed at length the reasons that these statutory provisions do not grant SCDOR and its Director the authority to regulate or enforce the County's actions under the Transportation Act, the scope of the Penny Tax Ordinance, or the implementation of the Penny Tax

Ordinance. The County reincorporates that analysis herein. *See*, County's Appellant's Brief, pp. 32-37.[5]

Importantly, nowhere in the Transportation Act and specifically S.C. Code Ann. § 4-37-30 does it provide that SCDOR has the authority to enforce the provisions of the Act. SCDOR's authority is limited to the "administration" and "collection" of the Penny Tax "in the same manner that other sales and use taxes are collected." S.C. Code Ann. § 4-37-30(A)(8). SCDOR and its Director have no authority to oversee or regulate the expenditure of "other sales and use taxes" that are collected. The same is true with the Penny Tax. There is simply no authority granted to SCDOR and its Director to oversee or regulate Richland County's use of the Penny Tax revenues. And certainly, there is no authority, express or implied, that SCDOR and its Director may withhold remittance of the Penny Tax revenues because of some perceived impropriety with the County's expenditure of those revenues. As already fully discussed in the County's Appellant's Brief, such an

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[5] In its Appellant's Brief, the County has not addressed the impact of SCDOR's audit powers pursuant to S.C. Code Ann. § 12-4-387 as authority for withholding the quarterly remittance of the Penny Tax revenues and directing the County regarding its expenditures under the Penny Tax Program. S.C. Code Ann. § 12-4-387 provides as follows: "The Department of Revenue shall use available personnel to conduct audits involving all taxes to promote voluntary compliance and to collect revenues for the general fund of the State and designated accounts." *See*, S.C. Code Ann. § 12-4-387. The phrase "voluntary compliance" as used in tax statutes refers to taxpayers voluntarily reporting and remitting the tax due. Thus, the plain meaning of S.C. Code Ann. § 12-4-387 refers to SCDOR's authority to audit taxpayers for the purpose of encouraging the voluntary filing of tax returns and payment of taxes due. Notably, the plain language of the statute does not grant authority to SCDOR to audit a governmental entity, which is not a taxpayer subject to voluntary tax compliance. And most importantly, it does not grant authority to SCDOR to determine how the collected revenue is or may be expended.

interpretation of the Transportation Act would constitute a grant of unprecedented power to a state agency in contravention of Home Rule and the separation of powers doctrine. *See*, County's Appellant's Brief, pp. 20-23. *See*, *Joseph v. South Carolina. Department of Labor, Licensing & Regulation*, 417 S.C. 436, 790 S.E.2d 763 (2016).

In claiming discretionary authority to withhold the remittance of the collected Penny Tax revenues, SCDOR also claims to be a "trustee" of the collected tax revenue. SCDOR relies on the 1939 case of *Sumter County v. Hurst*, 189 S.C. 316, 1 S.E.2d 242 (1939), where the Supreme Court wrote: "when a public officer receives money for the public use, he is a trustee to receive such monies and to pay them to the public official or function for whom or which they were intended." 1 S.E.2d at 244. That case addressed a scenario where a sheriff received funds from the federal government to reimburse the costs of housing federal prisoners in a county detention facility. The sheriff had refused to remit those funds to the county to which the money was to be paid. The Supreme Court stated that the sheriff "was the trustee of the Federal Government and of Sumter County to receive and pay these amounts." *Id.* The Court then concluded that the sheriff's refusal to remit those funds "was a breach of a plain ministerial duty, the performance of which could be compelled by mandamus." *Id.*

SCDOR misconstrues the "trustee" language from *Hurst* as establishing what in modern parlance would be a fiduciary relationship. The *Hurst* Court,

however, was simply holding that the sheriff had a duty "to receive and pay" the monies received from the federal government. 1 S.E.2d at 244.[6] There was no suggestion in the case that the sheriff had any greater role – such as to make sure the county properly or lawfully spent or allocated those funds once remitted.

Under modern law, courts have held that "[a] confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard for the interests of the one imposing the confidence." *Richland County v. Carolina Chloride, Inc.*, 382 S.C. 634, 677 S.E.2d 892, 898 (Ct. App. 2009). In *Hendricks v. Clemson University*, 353 S.C. 449, 578 S.E.2d 711 (2003), this Court explained: "Historically, this Court has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters." 578 S.E.2d at 716. Yet, there are no decisions from South Carolina appellate courts holding that a governmental entity is in a fiduciary relationship with another governmental entity or even with its citizens.[7] This Court has further elaborated on what is required to form a fiduciary relationship:

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[6] This duty is equivalent to SCDOR's duty to collect the taxes and remit them to the Treasurer for payment to the County.

[7] The only case where this Court found a governmental entity to actually have a fiduciary relationship is *Davis v. Greenwood School Dist. 50*, 365 S.C. 629, 620 S.E.2d 65 (2005), where the Court ruled in an employment case that "[a] school district has a position of

> The term fiduciary implies that one party is in a superior position to the other and that such a position enables him to exercise influence over one who reposes special trust and confidence in him. As a general rule, mere respect for another's judgment or trust in his character is usually not sufficient to establish such a relationship. The facts and circumstances must indicate that the one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf, but in the interests of the other party.

Burwell v. South Carolina National Bank, 288 S.C. 34, 340 S.E.2d 786, 790 (1986). (Citations omitted).

In short, the common law has not bestowed any fiduciary duties on SCDOR (or any other tax collector) to ensure that taxes collected are properly expended.[8] Not surprisingly, SCDOR and Reames have presented no case law from this or any other jurisdiction finding that a *tax collector* owes any fiduciary duties to the taxpayers to oversee, regulate or control how tax revenues are ultimately expended. Frankly, neither the common law nor the statutory law creates such a duty of care. Instead, as Judge Cooper correctly held, the duties owed by SCDOR and its Director under the express provisions of the Transportation Act are purely ministerial duties, the performance of which may be compelled by a writ of

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confidence with regard to its employees and therefore, a fiduciary duty exists between a school district and its employees." 620 S.E.2d at 68.

[8] In fact, common law cannot bestow any duty upon a state agency. The South Carolina Constitution mandates that the Legislature "shall provide appropriate agencies to function in these areas of public concern and determine the activities, powers, and duties of such agencies." S.C. Const., Art. XII, § 1.

mandamus.

B. Existence of Specific Legal Right to Receive Penny Tax Revenues

Judge Cooper also ruled that "pursuant to the provisions of §§ 4-37-30(A)(8) and (15), the County has a specific legal right to receive the Penny Tax Revenues collected in Richland County." (R. 39). SCDOR has not demonstrated that Judge Cooper abused his discretion in so ruling. Instead, in a conclusory manner,[9] SCDOR simply states that the lower court "ignored those provisions of the South Carolina Tax Code that grant SCDOR broad administrative authority over tax matters." (R. 45). SCDOR and Reames then cite the same statutory authority that they previously claimed to have created a discretionary duty to withhold Penny Tax revenues that it believes are not being properly expended by the County. Thus, SCDOR and Reames rehash the same argument made in denying the existence of a ministerial duty, but they offer no cogent or valid argument that Richland County does not have a legal right under the Transportation Act to the sales tax revenues collected.

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[9] It is well settled that "an issue is deemed abandoned on appeal, and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also*, *Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

C. Lack of Other Legal Remedy

In addressing the final factor in the mandamus analysis, Judge Cooper first determined that "[t]he Transportation Act does not provide an administrative remedy for the County to challenge the recommendations of SCDOR and the Director." (R. 40). That ruling has not been challenged by SCDOR. Moreover, Judge Cooper recognized that SCDOR's "demand that Richland County comply with Defendants' recommendations do not fall within the definition of a 'contested case' under the South Carolina Administrative Procedures Act." (R. 40). On that point, in a cursory discussion, SCDOR and Reames make the suggestion that the County does have "another legal remedy" by way of a "contested case" under the APA.

In support of that proposition, SCDOR and Reames cite to a single case, *Boggero v. South Carolina Department of Revenue*, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015), stating that a "tax appeal" is a contested case under the APA. In *Boggero*, a taxpayer was challenging an SCDOR decision requiring the taxpayer to pay sales taxes on the gross proceeds from its portable toilet business. The taxpayer claimed that its business was a service that was not subject to the state sales and use tax. Thus, the appeal of that decision was to the Administrative Law Court under the APA.

The present case, including the petition for writ of mandamus, is not a "tax

appeal." There was no formal or final decision by SCDOR for which an "appeal" could be pursued to the Administrative Law Court. Instead, SCDOR and Reames were refusing to comply with their ministerial duties unless the County met their demands, which included requiring the County to apply Internal Revenue Code (IRC) § 263 and § 263A in determining whether Penny Tax revenues could be used to fund any expenses incurred in connection with the Transportation Penny Tax Program. Thus, Judge Cooper was correct in concluding that the County had no alternative remedy available through the Administrative Law Court.

It is also important to distinguish between the concepts of forum and remedy. SCDOR and Reames suggest that the County had "another legal remedy" in the Administrative Law Court and strangely refers to that "remedy" as a "contested case." However, at best, the "contested case" procedure in the Administrative Law Court would have presented an alternative *forum* but not another *remedy*. The remedy would have been the same. The Administrative Law Court, like the Circuit Court, has the authority to issue a writ of mandamus, which is the only *remedy* available to compel SCDOR and its Director to fulfill their ministerial duty to remit the collected Penny Tax revenues.[10] This distinction

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[10] In *Kiawah Development Partners v. South Carolina Department of Health and Environmental Control*, 411 S.C. 16, 766 S.E.2d 707 (2014), this Court explained that "[t]he ALC has the same 'power at chambers or in open hearing as do circuit court judges' and the authority to issue writs necessary to give effect to its jurisdiction." 766 S.E.2d at 735, n.17. This Court cited to S.C. Code Ann. § 1-23-630(A) which provides that "[e]ach administrative law judge of the division has the same power at chambers or in open hearing as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction." S.C.

between forum and remedy was noted in *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 542 S.E.2d 360 (2001), where this Court wrote "[a]n agreement providing for arbitration does not determine the *remedy* for a breach of contract but only the *forum* in which the remedy for the breach is determined." 542 S.E.2d at 365. (Emphasis in original). As this Court further explained in *Munoz*, the plaintiffs "have not been deprived of a remedy -- they simply must seek their remedy through arbitration rather than through the judicial system." *Id.* In the present case, SCDOR and Reames' suggestion that the dispute could have possibly been litigated in the Administrative Law Court is merely a suggestion of a different *forum* but not a different *remedy*. Thus, Judge Cooper was correct in ruling that "[t]here is no other legal remedy for the County than mandamus." (R. 40).

In sum, the record clearly reflects that Judge Cooper correctly analyzed the four factors required for the issuance of a writ of mandamus. SCDOR and Reames have not demonstrated that any factual findings incident thereto are not supported by some reasonable evidence. Moreover, no showing has been made that Judge Cooper abused his discretion in compelling SCDOR and Reames to comply with their ministerial duties and remit the Penny Tax revenues collected in Richland County to the Treasurer on a quarterly basis as required by statute. The issuance of

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Code Ann. § 1-23-630(A). The Administrative Law Court thus has the power to issue a writ of mandamus, just as the Circuit Court does. *See also*, *Converse Power Corp. v. South Carolina Department of Health and Environmental Control*, 350 S.C. 39, 564 S.E.2d 341 (Ct. App. 2002).

the writ of mandamus should therefore be affirmed.

II. The Circuit Court correctly ruled that the legislature's intent as expressly stated in the Transportation Act gives Richland County the authority to use the Penny Tax revenues for administrative and operational costs.

As part of their analysis of the mandamus issue, SCDOR and Reames also argue that Judge Cooper erred in finding "that the preamble evidences the legislature's intent in the Transportation Act to give the County the authority to use the revenues for purposes other than capital improvements." *See*, SCDOR's Appellant's Brief, p. 17. Specifically, in his Amended Order, Judge Cooper writes:

> The County is given authority to exercise control over its Penny Tax Program. The words "acquiring, designing, ... and operating" cannot be ignored. ... I find that the legislative intent of the Transportation Act is to give authority to the County to administer and operate the Penny Tax Program and to use the Penny Tax Revenues and interest earnings only for the purposes stated in the Ordinance.

(R. 38-39). This finding goes to the crux of this case – whether the Transportation Act authorizes the use of Penny Tax revenues for operational or administrative costs including the operation of the COMET mass transit services provided by the Intervenor and whether the Penny Tax Ordinance is a validly enacted ordinance under the Transportation Act.

Richland County submits that S.C. Code Ann. § 4-37-30, as adopted by

1995 Act No. 52 and as amended by 2000 Act No. 368, allows for the expenditure of Penny Tax revenues for operating transportation-related projects (including operating mass-transit projects which were added to the categories of projects and facilities by the amendment in 2000). The intent of the General Assembly as to the scope of the authorized uses of the Penny Tax revenues is stated clearly in the preamble or "Findings" section of 1995 Act No. 52, as contained in Section 1 of the Act, which reads as follows:

> In furtherance of the powers granted to the counties of this State pursuant to the provisions of Section 4–9–30, and Section 6–21–10 *et seq.*, of the 1976 Code, each of the counties of this State is authorized to establish transportation authorities and to finance, following the public hearing and referendum required in this act, ***the cost of acquiring, designing, constructing, equipping and operating highways, roads, streets, and bridges, and other transportation-related projects***, either alone or in partnership with other governmental entities including, but not limited to, the South Carolina Department of Transportation.

See, 1995 Act No. 52, § 1. (Emphasis added). Moreover, S.C. Code Ann. § 4-37-30(A)(1) of the Act specifically requires that any county enabling ordinance must specify the projects and descriptions of projects for which the tax is to be used and the projects may include but are not limited to roads, mass transit systems (such as The COMET), greenbelts and other transportation-related facilities and projects of this type operated by the county. S.C. Code Ann. § 4-37-30(A)(1)(i) and (iii).

To that end, as authorized by S.C. Code Ann. § 4-37-30(A)(1)(a), Section 1(c) of the Penny Tax Ordinance specified the purposes for which the Penny Tax revenues must be used:

> For financing the costs of highways, roads, streets, bridges, greenways, pedestrian sidewalks, and bike paths and lanes and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Richland County or (jointly) operated by Richland County, other governmental entities and transportation authorities.

(R. 420). Moreover, Section 2(c) of the Ordinance provided in part:

> The maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax shall not exceed, in the aggregate, the sum of $1,037,900,000, and the maximum amount of net proceeds to be raised by the Sales and Use Tax shall not exceed $1,070,000,000, *which includes administrative costs* and debt service on bonds issued to pay for the projects.

(R. 420). (Emphasis added). Thus, the Ordinance does expressly include operating costs as authorized by the Transportation Act.

These provisions of the Penny Tax Ordinance, as challenged by SCDOR and Reames, are, as a matter of law, valid, enforceable and lawful under state law. The General Assembly's preamble to 1995 Act No. 52 gives express permission for the Penny Tax revenue to be used for "operating" transportation-related projects, which by later amendment includes "mass transit systems."[11] In *State v. Thrift*, 312

[11] When "mass transit systems" were added to S.C. Code Ann. § 4-37-30(A)(1)(a)(i) in 2000, the General Assembly did not make any additional "findings" nor include a preamble

S.C. 282, 440 S.E.2d 341, 354 (1994), this Court specifically explained that the "preamble of an act may be used as a guide in determining legislative intent." Likewise, in *Benjamin v. Housing Authority of Darlington County*, 198 S.C. 79, 15 S.E.2d 737, 738 (1941), this Court recognized that legislative findings are accorded "great weight because of the high regard we hold for a coordinate branch of the government." 15 S.E.2d at 738. *See also*, *Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 711 S.E.2d 895, 898 (2011) (this Court addressed legislative intent "as expressed in the preamble to our FOIA statute"); *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369, 374 (Ct. App. 1989) (Court of Appeals cited Act's preamble as "expressly stating" legislative intent).

In addition, the title to 1995 Act No. 52 states as follows:

> AN ACT TO AMEND TITLE 4, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 37 SO AS TO AUTHORIZE COUNTIES TO ESTABLISH OPTIONAL METHODS FOR THE FINANCING OF TRANSPORTATION FACILITIES INCLUDING THE ***ACQUISITION, CONSTRUCTION, EQUIPMENT, AND OPERATION*** OF HIGHWAYS, ROADS, STREETS, BRIDGES, AND OTHER TRANSPORTATION-RELATED PROJECTS EITHER ALONE, IN PARTNERSHIP WITH THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, OR JOINTLY-OPERATED PROJECTS OF THE

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section. Moreover, no attempt was made to delete or amend the "findings" section from the 1995 Act. The title to 2000 Act No. 368 states that the amendment was "to provide that the proceeds of the tax may be used for mass transit systems and greenbelt projects." *See*, 2000 Act No. 368.

COUNTY AND OTHER GOVERNMENTAL ENTITIES.

1995 Act No. 52. (Emphasis added). In *Whetstone v. South Carolina Department of Highways and Public Transportation*, 272 S.C. 324, 252 S.E.2d 35 (1979), this Court stated its interpretation of a statute was supported by the "underlying legislative history as exemplified by the original title of the pre-codified Act." 252 S.E.2d at 37. *See also*, *Kennedy v. South Carolina Retirement System*, 345 S.C. 339, 549 S.E.2d 243, 248 (2001) (where the Court looked at the title of an Act to glean legislative intent); *Demas v. Convention Motor Inns*, 268 S.C. 186, 232 S.E.2d 724, 726 (1977) (noting that it is proper to discern legislative intent from the title of an Act); *Duvall v. South Carolina Budget & Control Board*, 377 S.C. 36, 659 S.E.2d 125, 130 (2008) (same).

In sum, the legislative intent is clear from the Act itself, including the title and the express legislative findings. The expenditure of Penny Tax revenues is not limited to "capital costs" for the construction of "capital improvements." Instead, the Penny Tax revenues may be expended on the "operation" of transportation-related facilities or projects, which includes the operation of The COMET mass transit system.

In response, SCDOR and Reames reject any interpretative benefit from the language of the preamble and its express legislative findings issued by the General Assembly. Yet, even the case cited by SCDOR and Reames, *Mitchell v. City of*

Greenville, 411 S.C. 632, 770 S.E.2d 391 (2015), holds that "[w]hile the preamble is not a part of the effective portion of a statute, it may supply the guide to the meaning of an act." 770 S.E.2d at 392.

Moreover, SCDOR and Reames argue that the word "operating" appears in the preamble but not in the "effective part" of the statute, but that is not correct.[12] In fact, the words "operated" and "jointly-operated" are used in S.C. Code Ann. § 4-37-30(A)(1)(a), including the phrase "operated by the county." Moreover, to take SCDOR and Reames' argument to its logical conclusion, the words "acquiring," "designing," "constructing," and "equipping" and their derivations do not appear in S.C. Code Ann. § 4-37-30(A), but SCDOR and Reames do not and cannot take the position that Penny Tax revenues may not be expended for acquiring property for construction or rights-of-way or designing roads or constructing roads or equipping roads (such as with traffic-control devices or guardrails). They fully acknowledge that those expenses are allowed to be paid with Penny Tax revenues. They only dispute operational or administrative costs – despite the express use of the term "operating" in the preamble and "operation" in the title. In essence, the scope of the Transportation Act and what expenses are permissible – i.e., the intent of the General Assembly – may clearly be determined by reference to the preamble containing the express legislative findings and the

[12] SCDOR and Reames make no mention that the word "operation" appears as well in the title to Act No. 52.

title. Therefore, this Court is urged to rule that operational or administrative costs, including the costs associated with operating a mass transit system for the citizens of Richland County, may be properly and legally paid with Penny Tax revenues and their inclusion in the Penny Tax Ordinance does not violate the Transportation Act.

III. The Circuit Court correctly ruled in denying the Motion for Injunction filed by the South Carolina Department of Revenue and former Director Rick Reames.

SCDOR and Reames sought an injunction prohibiting Richland County "from making any further payments, expenditures, funding, contracts or other obligations of Penny Tax Funds unless and until Plaintiff adopts and implements IRC 263/263A as a standard, some other acceptable uniform standard and/or other appropriate safeguards to ensure the expenditures of Penny Tax Funds qualify as allowable costs under the Act and therefore are a proper use of Penny Tax dollars." (R. 238). In his Amended Order, Judge Cooper denied SCDOR's Motion for Injunction "because SCDOR and the Director will not suffer irreparable harm if the Injunction is not issued against Plaintiff." (R. 44). He further ruled that SCDOR and Reames failed to carry their burden of showing irreparable harm because "[n]one of the affidavits provided to the Court ... discuss any injury that either the Department or the Director will suffer if the County continues its Penny Tax

Program." (R. 44).

It is well settled that "[t]he purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. South Carolina Department of Corrections*, 392 S.C. 361, 709 S.E.2d 639, 642 (2011). The party requesting the preliminary injunction must both allege facts sufficient to state a cause of action for an injunction and demonstrate the relief is reasonably needed to preserve the parties' rights during litigation. *Id.* Thus, the party seeking a preliminary injunction must establish "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc.*, 361 S.C. 117, 603 S.E.2d 905, 908 (2004).

As Judge Cooper determined, SCDOR and Reames made no showing that they would suffer irreparable harm. They do not challenge that finding on appeal. Instead, they argue that Judge Cooper failed to consider the irreparable harm that the taxpayers of Richland County would allegedly suffer. However, the law is clear that the party seeking the preliminary injunction must show irreparable harm *to the party requesting it*, which here is SCDOR and Reames and not any non-parties to the case. *See*, *Compton*, 709 S.E.2d at 642. Because SCDOR and Reames have produced no evidence that they will be irreparably harmed, the preliminary injunction was correctly denied.

Moreover, SCDOR and Reames have also not discussed nor pointed to any evidence in the record that would support a finding that even the taxpayers would suffer irreparable harm. In a conclusory manner, SCDOR merely insists that "[o]nce allocated and remitted, the revenues are wasted and cannot be recovered for their intended purposes." *See*, SCDOR's Appellant's Brief, p. 21. Yet, there is no evidence to support that, and certainly, there is no legal basis for revenues to be recovered by SCDOR and Reames. In the event that the Penny Tax revenues have been expended for purposes not permitted by the Transportation Act, then the remedy is a reimbursement of those funds by the County not to SCDOR but to the Penny Tax Transportation Program. In short, there has been no showing of irreparable harm to either SCDOR or even to the Richland County taxpayers as would require the issuance of a preliminary injunction.

Additionally, having denied SCDOR and Reames' request for an injunction because they did not prove irreparable harm, Judge Cooper did not address the other two elements necessary to obtain the requested injunction – namely likelihood of success on the merits and lack of an adequate remedy at law. *Denman v. City of Columbia*, 387 S.C. 131, 691 S.E.2d 465, 470 (2010). Therefore, as an additional sustaining ground,[13] the County submits that SCDOR

[13] In *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), this Court discussed at length the law governing additional sustaining grounds. This Court explained that "in raising an additional sustaining ground in an appeal, the party who prevailed in the lower court urges an appellate court to affirm the lower court's ruling for a reason other than one

and Reames do not have a likelihood of success on the merits regarding their contention that the Penny Tax Ordinance is void on its face.

As discussed above and in prior briefs, SCDOR and Reames' focus on capital costs as opposed to non-capital costs, such as design and operating costs, completely ignores the intent of the General Assembly and the express statutory language of the Transportation Act. In fact, their proposed limitation on expending Penny Tax revenues only for capital items could create the absurd result that a county may expend Penny Tax revenues to buy transit buses but then not be able to use the Penny Tax revenues to hire staff to operate the bus system.

Indeed, SCDOR and Reames' argument completely ignores the statutory rule of construction, as enacted pursuant to Home Rule, requiring "[t]he powers of a county" to be "liberally construed in favor of the county." S.C. Code Ann. § 4-9-25. In *Hospitality Association of South Carolina, Inc. v. County of Charleston*, 320 S.C. 219, 464 S.E.2d 113 (1995), this Court held that

> As ratified, new Article VIII directed the General Assembly to implement what was popularly referred to as "home rule" by establishing the structure, organization, powers, duties, functions, and

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primarily relied upon by the lower court." 526 S.E.2d at 722. This Court further explained that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." 526 S.E.2d at 723. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* *See also*, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

> responsibilities of local governments by general law. S.C. Const. art. VIII, §§ 7 and 9. In addition, new Article VIII mandated a liberal rule of construction regarding any constitutional provisions or laws concerning local government. S.C. Const. art. VIII, § 17.

464 S.E.2d at 117. Thus, in construing a statute purporting to give local government power and responsibilities, this Court should liberally construe it so as to give the powers and duties in question to the local government. SCDOR and Reames' construction of the Transportation Act not only misconstrues the words in the Act to contend that the Penny Tax Ordinance is void under the Act, but their construction also does not recognize Article VIII's mandate that there be liberal rules of construction in favor of the powers that can be exercised by local government.

In short, the denial of the Motion for Injunction may also be upheld because SCDOR and Reames cannot demonstrate a likelihood of success on the merits of their claims.

IV. The Circuit Court correctly ruled in denying the Motion for Appointment of a Receiver.

As a final issue for appeal, SCDOR and Reames contend that Judge Cooper erred in denying their Motion for Appointment of a Receiver. This Court has held that "the appointment of a receiver is within the discretion of the circuit judge." *Midlands Utility, Inc. v. South Carolina Department of Health and Environmental*

Control, 301 S.C. 224, 391 S.E.2d 535, 537 (1989). "The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution." *Id.*

Judge Cooper denied the request for appointment of a receiver on the basis that neither SCDOR nor its Director has statutory authority to make such a request. In addition, he ruled that the request for appointment of a receiver was untimely in that SCDOR had been making quarterly remittances of the Penny Tax revenues collected in Richland County since July 2013, and did not timely request the appointment of a receiver. SCDOR and Reames have made no showing that Judge Cooper abused his discretion in denying the request for a receiver on these bases. They have not demonstrated that SCDOR has any statutory authority to seek the appointment of a receiver nor that Judge Cooper abused his discretion in finding the request to be untimely.[14]

In addition, SCDOR and Reames have not shown any entitlement to a receiver. This Court has explained that "as a rule, a receiver will not be appointed

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[14] This Court has repeatedly stressed "the long-established preservation requirement that the [appealing] party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments." *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004). In their brief, SCDOR and Reames raise waiver and estoppel arguments for the first time on appeal to address the finding that the motion was untimely. While they did file a Rule 59(e) motion in the lower court, these arguments were not asserted. In fact, no exception to Judge Cooper's rulings on the receivership motion were raised in that motion. Therefore, the trial court did not

during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined." *Pelzer v. Hughes*, 27 S.C. 408, 3 S.E. 781, 785 (1887). No such showing has been made. Likewise, S.C. Code Ann. § 15-65-10 provides that a person is entitled to the appointment of a receiver before judgment provided he can prove (1) he has an apparent right to the property, (2) the property is in the possession of the adverse party, and (3) the property is in danger of being adversely impacted. *See*, S.C. Code Ann. § 15-65-10. Each of these factors have to be present before the court can consider appointing a receiver. SCDOR and Reames did not present evidence to support each of those three factors, and for that additional reason, the denial of the appointment of a receiver was correct and should be affirmed.

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have the initial opportunity to address the waiver and estoppel arguments, and they should not be considered for the first time on appeal.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant-Respondent Richland County respectfully requests that this Court affirm the Amended Order of Circuit Court Judge G. Thomas Cooper, Jr., filed August 2, 2016, to the extent that the Circuit Court issued a writ of mandamus directing SCDOR and its Director to comply with their ministerial duties and remit the Penny Tax revenues collected in Richland County to the Treasurer on a quarterly basis as required by statute. The Court is also respectfully requested to affirm the denial of SCDOR's Motion for Injunction and the alternative request that a receiver be appointed.

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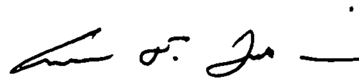
CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant-Respondent Richland County certifies that the Final Respondent's Brief of Appellant-Respondent complies with Rule 211(b), SCACR.



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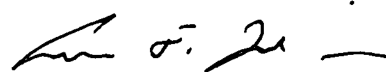
CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant-Respondent Richland County certifies that the Final Respondent's Brief of Appellant-Respondent complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.



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CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant-Respondent Richland County, does hereby certify that service of the **Respondent's Brief of Appellant-Respondent** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 24th day of April 2017:

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